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EXAMINER

NGUYEN, SON T

ART UNIT PAPER NUMBER

3643

DATE MAILED: 09/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/876,799

Applicant(s)

GILBERT, SCOTT R.

Examiner

Son T. Nguyen

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-69 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25, 27-33, 36-61 and 63-69 is/are rejected.
- 7) ☒ Claim(s) 26, 34, 35 and 62 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 June 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the receptacle having an open bottom end must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "12" has been used to designate bouquet, open top and open end. Reference character "54" has been used to designate both a pack and a line of perforations. Reference character "112" has been used to designate bouquet and open top. Reference character "212" has been used to designate bouquet and open top. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 30,32,34,130,132,134. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

4. **Claim 17** is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 17 recites the receptacle having a closed bottom end, which the examiner believes is the same as in claim 1, which recites "a receptacle having a top opening, a closed bottom,...".

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. **Claims 13,27,63-69** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For claims 13 & 27, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d). For claim 63, line 7, "the sheet" is unclear because two sheets were claimed prior.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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8. **Claims 1,13,17-20,30,36** are rejected under 35 U.S.C. 102(b) as being anticipated by Ikeda (US 4,784,864 on form PTO-1449).

For claims 1,17, Ikeda discloses a plant 8 (seaweed) container 1 comprising a receptacle 5 having a top opening 6, a closed bottom 3, and a top flap 7 of sufficient size to cover the seaweed placed in the receptacle, the receptacle and flap consisting essentially of a front panel 1 and a back panel 1 (col. 5, line 55), at least one of the front and back panels being triangular, the front and back panels being connected to each other along two edges 21' of the triangle (col. 5, line 56).

For claim 13, Ikeda further discloses the panels 1,1 are made out of polypropylene (col. 3, line 20).

For claim 18, Ikeda further discloses the receptacle 5 has an open bottom end 3 when tear-off portion 4 is detached.

For claim 19, Ikeda further discloses both panels 1,1 have a triangular shape. Note, the examiner is not considering flap 7 to be part of the back panel because flap 7 is a separate element which, when the flap is folded over the opening 6, the line of separation will be apparent.

For claim 20, Ikeda further discloses the panels 1,1 have the same triangular shape (can be seen when flap 7 is folded over the opening). Note, the examiner is not considering flap 7 to be part of the back panel because flap 7 is a separate element which, when the flap is folded over the opening 6, the line of separation will be apparent.

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For claim 30, Ikeda discloses in fig. 12 and col. 5, lines 54-68, col. 6, lines 1-4, a method of making a batch of the plant containers as in claim 1, the method comprising the steps of overlaying a first web 1 and a second web 1 of a suitable film material such as the polypropylene; forming essentially permanent sealing seams 21' between the first and second webs corresponding to the desired shape of the panels; and dividing the so-seamed webs into containers 1.

For claim 36, Ikeda discloses a method of providing a container 1 for a plant (seaweed), the method comprising the steps of providing the plant container as in claim 1; inserting the seaweed into the container's top opening 6; and folding the top flap 7 over the top opening (as shown in fig. 7).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. **Claims 2-12,21,22,28,29,32,37-40** are rejected under 35 U.S.C. 103(a) as being unpatentable over Ikeda (as above).

For claims 2-8, in addition to the above, Ikeda further discloses the receptacle 5 has an upper edge (fig. 7 where ref. 5 is pointing at) defining the top opening and the flap 7 extending an unknown distance above a portion of the upper edge. However, Ikeda is silent about the flap extends at least 6,7,8,9,10,11, or 12 inches above a portion of the receptacle's upper edge. It would have been obvious to one having ordinary skill

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in the art at the time the invention was made to have the flap of Ikeda extends at least 6,7,8,9,10,11, or 12 inches above a portion of the upper edge, since it has been held that where routine testing and general experimental conditions are present (testing condition such as determining a flap distance that is sufficient enough so that material contained therein will not fall out), discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

For claims 9-12, Ikeda is silent about the height of the top flap being at least equal to 25%, 30%, 35%, or 40% of the height of the receptacle. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the flap's height of Ikeda being at least equal to 25%, 30%, 35%, or 40% of the receptacle's height, since it has been held that where routine testing and general experimental conditions are present (testing condition such as determining a flap's height that is sufficient enough so that material contained therein will not fall out), discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

For claims 21-22, Ikeda is silent about each of the panels have a right triangular shape or a right isosceles triangular shaped. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a right triangular shaped or a right isosceles triangular shaped panels in place of the triangular shaped panels 1,1 of Ikeda, since both shapes of triangle for the panels will perform the same function, i.e. to hold a plant or article when connected together and to enhance the appearance of the container.

For claim 28, Ikeda does not disclose the panels 1,1 lay flat against each other when the container is in a collapsed state whereby they may be compactly stored until ready for use. It is notoriously well known that a container of flaccid material such as that of Ikeda can be collapsed and stored until ready for use. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to store the container of Ikeda in a collapsed state until the container is ready for use, since it is notoriously well known that containers of flaccid material such as that of Ikeda can be collapsed and stored until ready for use.

For claim 29, although Ikeda does not disclose a series of the containers being aligned and stacked in a pack, it is notoriously well known in the art that a plurality of flaccid material containers can be aligned and stacked in a pack for organization and space saving when stored. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to align and stack a plurality of containers of Ikeda in a pack, since it is notoriously well known that containers of flaccid material can be aligned and stacked in a pack for organization and space saving when stored.

For claim 32, Ikeda does not disclose the steps of similarly aligning and stacking the containers in a collapsed state to form a pack for use at a consumer site. It is notoriously well known that containers of flaccid material such as that of Ikeda can be aligned and stacked in a collapsed state to form a pack for use at a consumer site such as a grocery store. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include the steps of aligning and stacking

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the containers of Ikeda in a collapsed state to form a pack for use at a grocery store, since it is notoriously well known that containers of flaccid material such as that of Ikeda are sold at grocery store in collapsed state for consumer to purchase.

For claim 37, as mentioned in claim 32, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include the step of storing the container of Ikeda in a collapsed state for storage purpose, since it is notoriously well known that containers of flaccid material such as that of Ikeda are sold at grocery store in collapsed state for consumer to purchase. In addition, it is inherent in Ikeda that the step of expanding the container prior to inserting the plant is performed in order to put the plant or seaweed in the container.

For claim 38, Ikeda further discloses the step of securing the top flap 7 in its folded position by using seal member 10.

For claim 39, Ikeda further discloses the step of taping (using seal member 10) the top flap 7 to a front portion of the receptacle (see fig. 7).

For claim 40, please see the above paragraphs for explanation.

11. **Claims 14-16** are rejected under 35 U.S.C. 103(a) as being unpatentable over Ikeda (as above) in view of Straeter (US 5,595,298).

For claim 14, Ikeda further discloses the receptacle has a conic shape (see all figures) and the top flap 7 is polygonal shaped (as shown in the figures). However, Ikeda is silent about the top flap 7 being triangular-shaped. Straeter teaches in figs. 3-4 a receptacle to hold a plant 28, the receptacle has a triangular-shaped top flap 42 to cover the plant contained in the receptacle. It would have been obvious to one having

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ordinary skill in the art at the time the invention was made to substitute the polygonal shaped top flap of Ikeda with the triangular shaped flap as taught by Straeter, since both shapes of flap would perform the same function, i.e. to cover the top opening of the receptacle, and thus the plant contained therein.

For claim 15, Ikeda does not disclose the panels 1,1 lay flat against each other when the container is in a collapsed state whereby they may be compactly stored until ready for use. It is notoriously well known that a container of flaccid material such as that of Ikeda can be collapsed and stored until ready for use. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to store the container of Ikeda in a collapsed state until the container is ready for use, since it is notoriously well known that containers of flaccid material such as that of Ikeda can be collapsed and stored until ready for use.

For claim 16, although Ikeda does not disclose a series of the containers being aligned and stacked in a pack, it is notoriously well known in the art that a plurality of flaccid material containers can be aligned and stacked in a pack for organization and space saving when stored. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to align and stack a plurality of containers of Ikeda in a pack, since it is notoriously well known that containers of flaccid material can be aligned and stacked in a pack for organization and space saving when stored.

12. **Claim 31** is rejected under 35 U.S.C. 103(a) as being unpatentable over Ikeda (as above) in view of Gilbert (US 5,647,168). Ikeda discloses the step of forming sealing

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seams between the first and second webs and dividing the seam webs into containers (col. 5, lines 54-60 and fig. 12) but Ikeda is silent about the seam-forming and dividing steps are performed substantially simultaneously by hot wires. Gilbert teaches a method of making a batch of containers 10 in which he employs hot wires sealing to form permanent sealing seams between a first web and a second web and dividing the webs into containers (col. 15, lines 40-50). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ hot wires sealing as taught by Gilbert in the method of Ikeda in order to reduce the amount of material waste and to eliminate racing stripes and overlap between the containers (col. 15, lines 48-51 of Gilbert).

13. **Claims 1-25,28-29,36-41,49-52** are rejected under 35 U.S.C. 103(a) as being unpatentable over Straeter (US 5,595,298) in view of Ferguson (US 6,129,208).

For claims 1,17-20, Straeter discloses in figs. 3-4, a plant container comprising a receptacle 36,10,22 having a top opening 38, an open bottom end 40, and a top flap 42 of sufficient size to cover the plant 28,32 placed in the receptacle, the receptacle and flap are formed from a sheet of material rolled up to form a front panel and a back panel (figs. 3-4, the back and the front portions when the sheet is rolled up into a sleeve), at least one of the front and back panels being triangular (note, according to the Microsoft Bookshelf Basic Dictionary, triangular is defined as of, relating to, or shaped like a triangle, which both panels of Straeter, when rolled up as shown in figs. 3-4, are shaped like or relating to a triangle). However, Straeter is silent about the container having a closed bottom and the front and back panels being connected to each other along two

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edges of the triangle. Ferguson teaches a plant flat-collapsible container comprising a receptacle having a top opening and a closed bottom, the receptacle is formed by connecting front and back panels together at their edges by seam lines. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the bottom of the container of Straeter closed up as taught by Ferguson in order to prevent a portion of the plant from protruding outward, thus preventing damage to the plant. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the container of Straeter such that it comprised two panels connected to each other at their edges as taught by Ferguson instead of one continuous sheet rolled up to create first and second panels, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Newin vs. Erlicnman*, 168, USPQ 177,179.

For claims 2-8, Straeter as modified by Ferguson (emphasis on Straeter) further discloses the receptacle 36,10,22 has an upper edge (fig. 3, where ref. 38 is pointing at) defining the top opening and the flap 42 extending an unknown distance above a portion of the upper edge. However, Straeter as modified by Ferguson is silent about the flap extends at least 6,7,8,9,10,11, or 12 inches above a portion of the receptacle's upper edge. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the flap of Straeter as modified by Ferguson extends at least 6,7,8,9,10,11, or 12 inches above a portion of the upper edge, since it has been held that where routine testing and general experimental conditions are present (testing condition such as determining a flap distance that is sufficient enough so that material

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contained therein will not fall out), discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

For claims 9-12, Straeter as modified by Ferguson is silent about the height of the top flap being at least equal to 25%, 30%, 35%, or 40% of the height of the receptacle. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the flap's height of Straeter as modified by Ferguson being at least equal to 25%, 30%, 35%, or 40% of the receptacle's height, since it has been held that where routine testing and general experimental conditions are present (testing condition such as determining a flap's height that is sufficient enough so that material contained therein will not fall out), discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

For claim 13, Straeter as modified by Ferguson (emphasis on Straeter) further discloses the panels are made out of polypropylene (col. 3, line 8 of Straeter).

For claim 14, Straeter as modified by Ferguson (emphasis on Straeter) further discloses the receptacle has a conic shape and the top flap has a triangular shape when the container is expanded to hold a plant (see figs. 3-4 of Straeter).

For claims 15,28, Straeter as modified by Ferguson is silent about the panels 1,1 lay flat against each other when the container is in a collapsed state whereby they may be compactly stored until ready for use. It is notoriously well known that a container of flaccid material such as that of Straeter as modified by Ferguson can be collapsed and stored until ready for use. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to store the container of Straeter as

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modified by Ferguson in a collapsed state until the container is ready for use, since it is notoriously well known that containers of flaccid material such as that of Straeter as modified by Ferguson can be collapsed and stored until ready for use.

For claims 16,29, Straeter as modified by Ferguson is silent about a series of the containers being aligned and stacked in a pack. It is notoriously well known in the art that a plurality of flaccid material containers can be aligned and stacked in a pack for organization and space saving when stored. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to align and stack a plurality of containers of Straeter as modified by Ferguson in a pack, since it is notoriously well known that containers of flaccid material can be aligned and stacked in a pack for organization and space saving when stored.

For claims 21-23, Straeter is silent about the panels each having a right triangular shape and Straeter as modified by Ferguson is silent about a right isosceles triangular shaped panels. In addition to the above mentioned container, Ferguson further teaches in figs. 10-13, the container's panels 22a,23a have a right triangular shape including a hypotenuse edge 25 and two perpendicular edges 27,29, wherein the panels are sealed to each other along their hypotenuse edges 25 and along one of their perpendicular edges 27 in order to form a pickup point 201 so as to make it easier for a user to handle the filled container during packing (col. 5, lines 1-8). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a right triangular shape panels with a hypotenuse edge and two perpendicular edges, wherein the panels are sealed to each other along their hypotenuse edges and

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along one of their perpendicular edges as taught by Ferguson in place of the triangular shape panels of Straeter in order to form a pickup point so as to make it easier for a user to handle the filled container during packing. In addition, it would have been an obvious substitution of functional equivalent to substitute the right triangular shaped panels of Straeter as modified by Ferguson with right isosceles triangular shape panels, since both types of panel would perform the same function, i.e. to form a receptacle for containing a plant, which receptacle having a pickup point and flap to cover the plant contained therein.

For claim 24, Straeter as modified by Ferguson (emphasis on Ferguson) further discloses the edges 25,27 of the panels 22a,23a form the outer perimeter of the container when it is in its collapsed state whereby the container has a collapsed triangular shape (see figs. 10-13 of Ferguson since Ferguson is modifying Straeter for panel shape teaching).

For claim 25, Straeter as modified by Ferguson (emphasis on Ferguson) further discloses the edges 25,27 are heat sealed (col. 2, lines 55-56), which creates permanent seams.

For claim 36, Straeter as modified by Ferguson discloses a method of providing a container for a plant, the method comprising the steps of providing the plant container as explained in the above paragraph for claim 1; inserting the plant 28,32 (of Straeter) into the container's top opening (near ref. 38 of Straeter); and folding the top flap 42 (of Straeter) over the top opening.

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For claim 37, Straeter as modified by Ferguson further discloses storing the container in a collapsed state and expanding the container prior to inserting step to form the receptacle. Please see the above paragraphs for detail explanation.

For claim 38, Straeter as modified by Ferguson further discloses securing the top flap 42 (of Straeter) in its folded position.

For claim 39, Straeter as modified by Ferguson further discloses taping (by using adhesive 26 of Straeter) the top flap 42 (of Straeter) to a front portion (near ref. 22 in fig. 3 of Straeter) of the receptacle.

For claim 40, Straeter as modified by Ferguson discloses a method of providing a container for a plant 28,32 comprising the steps of storing the plant container (as explained in the above paragraph to claim 1) in a collapsed state (both Straeter and Ferguson teach their containers in collapse state or flat form for storage); expanding the container (so as to place the plant therein, inherent in both references); and inserting the plant into the container's top opening (as shown in figs. 3-4 of Straeter and fig. 1 of Ferguson).

For claim 41, Ferguson further teaches in col. 4, lines 49-51, that a packer places a plant into the container by opening the container at its opening 33. However, Straeter as modified by Ferguson does not specifically disclose that the steps of inserting and expanding are performed by a consumer at a point-of-purchase of the plant. It is notoriously well known that containers such as those taught by Straeter and Ferguson are placed in grocery floral area where a consumer can place his/her own plant/floral within the container. Therefore, it would have been obvious to one having ordinary skill

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in the art at the time the invention was made to place the containers of Straeter and Ferguson at grocery floral area so that a consumer can perform the step of inserting and expanding the container to put a plant or floral therein at the point-of-purchase.

For claim 49, Straeter as modified by Ferguson teaches in combination, a plant container as explained in claim 1 and a bouquet 28,32 (of Straeter).

For claims 50-51, see explanation for claim 1 above.

For claim 52, Straeter is silent about the container in combination with a potted plant inserted therein. In addition to the above features, Ferguson further teaches the container can used to hold a potted plant (col. 1, line 18). From the above explanation, Straeter as modified by Ferguson further teaches the plant container in combination with a potted plant. Note, Ferguson teaches a container that can hold a floral grouping or a potted plant because of the container having a closed bottom. Straeter does not teach a closed bottom for his container, and therefore, a potted plant cannot be held therein. However, Straeter as modified by Ferguson allows Straeter's container to hold a potted plant since the container is modified by Ferguson's teaching of a closed bottom. Straeter's invention is not altered by this modification because his container still can hold a floral grouping.

14 **Claims 30-33** are rejected under 35 U.S.C. 103(a) as being unpatentable over Straeter (US 5,595,298) in view of Ferguson (US 6,129,208) and Gilbert (US 5,647,168).

For claims 30,31, Straeter as modified by Ferguson is silent about a method of making a batch of the container as in claim 1. Gilbert teaches in figs.14-5, col. 15, lines

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36-67, and col. 16, lines 1-14, a method of making a batch of plant containers comprising the steps of overlaying a first web and a second web (col. 15, line 64) of a suitable film material (col. 12, lines 27-42); forming essentially permanent sealing seams (by hot-wire or hot dies sealing) between the first and second webs corresponding to the desired shape of panels 11,11'; and dividing the so-seamed webs into the containers. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the method of making a batch of plant containers as taught by Gilbert to make a batch of the plant containers of Straeter as modified by Ferguson in order to minimize material wastage and to form containers that are free from racing stripes and overlap (col. 15, lines 45-51 of Gilbert).

For claim 32, Gilbert further teaches aligning and stacking the containers in a collapsed state to form a pack for use at a consumer site (col. 16, lines 17-19). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the steps of aligning and stacking the containers in a collapsed state to form a pack as taught by Gilbert in the method of Straeter as modified by Ferguson and Gilbert in order to save storage space by stacking these containers into a pack.

For claim 33, since Straeter as modified by Ferguson and Gilbert (emphasis on Ferguson) teaches the desired shaped of a right triangular shape as explained in the above paragraph for claim 23, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the method of making a batch of the containers of Straeter as modified by Ferguson and Gilbert to make the desired right

triangular shaped panels in order to form a pickup point so as to make it easier for a user to handle the filled container during packing.

15. **Claims 42-48** are rejected under 35 U.S.C. 103(a) as being unpatentable over Straeter as modified by Ferguson as applied to claims 1,40,41 above, and further in view of Griffo et al. (US 4,091,925).

For claim 42, Straeter as modified by Ferguson is silent about a dispenser located near a plant selection site to facilitate the step of inserting and expanding. Griffo et al. teach a flower sleeve/container 10 comprising front 12 and back 14 panels that are heat sealed at their edges to form the sleeve/container, the sleeve/container is hung on a dispenser 40 where a user can place flowers 48 therein (see figs. 6,7,9, which shows a user's hand expanding and inserting the flower 48 into the sleeve/container). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a dispenser as taught by Griffo et al. to hang or store the container of Straeter as modified by Ferguson so as to allow a user with support to expand the container and insert the plant therein. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to place the dispenser and container of Straeter as modified by Ferguson and Griffo et al. near a plant selection site in order to provide a user with the convenience of buying the plant and wrapping the plant at one area.

For claim 43, in addition to the above, Griffo et al. further disclose a pack of sleeve/containers being hung on the dispenser to provide a user with the convenience of continuous usage of other containers (see figs. 5-9). It would have been obvious to

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one having ordinary skill in the art at the time the invention was made to hang a pack of containers of Straeter as modified by Ferguson and Griffo et al. on the dispenser in order to provide a user with the convenience of continuous usage of other containers.

For claim 44, in addition to the above, Straeter as modified by Ferguson and Griffo et al. (emphasis on Griffo et al.) further disclose the dispenser having hooks 46,42 to hold the container in place on the dispenser. As for the removable strip, Ferguson discloses in col. 5, lines 24-32, that a plurality of containers can be bonded together along protruding portion 47 having openings 51 through which a rod can extend and the plurality of containers can be hung from the rod. In addition, Ferguson teaches that a user can separate a single container from the plurality of containers by tearing each container along tear line formed by perforations 49. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a removable strip as taught by Ferguson to hang a plurality of containers in the pack of Straeter as modified by Ferguson and Griffo et al. in order to hold the plurality of containers together and to allow a user to tear a single container individually from the pack.

For claim 45, Straeter as modified by Ferguson and Griffo et al. further discloses the steps of pulling the front-facing panel forward to expand the container (see fig. 6 of Griffo et al.); inserting the plant into the open top of the container (see fig. 7 of Griffo et al.); and pulling the container forward to detach the strip (see col. 5, lines 25-32 of Ferguson).

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For claim 46, Straeter as modified by Ferguson and Griffo et al. (emphasis on Straeter) further discloses the steps of folding the top flap 42 over the top opening; and securing the top flap in its folded position. See figs. 3-4 of Straeter.

For claims 47-48, see above paragraphs for explanation.

16. **Claim 53** is rejected under 35 U.S.C. 103(a) as being unpatentable over Straeter as modified by Ferguson as applied to claims 1,52 above, and further in view of Weder (US 5,966,869). Straeter as modified by Ferguson (emphasis on Ferguson since Straeter is being modified by Ferguson for a bottom portion) further discloses the receptacle having a conical bottom end portion 35,38 (note, although Ferguson's bottom end of Straeter is not a perfect cone, it is conical because according to the Microsoft Bookshelf Basic Dictionary, conical is defined as relating to or **shape like** a cone). However, Straeter as modified by Ferguson is silent about the bottom end portion being folded towards the bottom surface of the potted plant. Weder teaches in figs. 17A-17B a floral sleeve/container comprising front and back panels heat sealed together at their edges, a top flap 68 to cover an opening of the container, and a gusseted bottom end portion 26 folded towards the bottom surface of a potted plant when one is placed therein. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a gusset that is folded towards a bottom surface of a potted plant as taught by Weder on the bottom end portion of the container of Straeter as modified by Ferguson for added strength or expansion.

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17. **Claims 54-61, 63-69** are rejected under 35 U.S.C. 103(a) as being unpatentable over Straeter (US 5,595,298) in view of Ferguson (US 6,129,208) and Nuova (IT 224,507 on form PTO-1449).

For claim 54, as explained in the above paragraphs, Straeter as modified by Ferguson teaches a plant container comprising a receptacle having a top opening and a top flap selectively folded over the top opening (from Straeter); wherein the container is formed from two panels sealed together along edges of the panels (from Ferguson). However, Straeter as modified by Ferguson is silent about sealing the panels in a way that each of the panels forms $\frac{1}{2}$ of the receptacle and $\frac{1}{2}$ of the top flap (in another word, sealing from the center to divide the container into halves). Nuova teaches in fig. 7 a plant container 1 in which Nuova seals two panels/sheets 2a, 2b to form the container, wherein the seal forms in a way such that the container is divided into two halves from the center of the container. It would have been an obvious substitution of functional equivalent to substitute sealing panels at their side edges to make a plant container as taught by Straeter as modified by Ferguson with sealing panels in a way such that the container is divided into two halves from the center of the container, since both method of sealing would perform the same function, i.e. to join the two panels together to make a container for a plant. By sealing at the center of the container of Straeter as modified by Ferguson and Nuova, each of the panels forms $\frac{1}{2}$ of the receptacle and $\frac{1}{2}$ of the top flap.

For claims 55-61, please see the above paragraphs for explanation.

For claim 63, in addition to the above paragraphs, Straeter teaches the top flap 42 being folded over the opening to cover the plant contained in the receptacle. By the action of folding this flap, a line is created in the panels; therefore, with the teaching of Ferguson and Nuova as explained in the above, the line created from folding the flap 42 of Straeter will cross one of the seams (which runs down the center of the receptacle as taught by Nuova).

For claim 64, please see the above explanation for claim 23. The hypotenuse edges 25 (of Ferguson) are longer than the edges of the other pair of joined edges 27.

For claim 65-66, please see the above paragraphs for explanation.

For claim 67, Straeter as modified by Ferguson and Nuovo (emphasis on Ferguson) further teaches the two pairs of co-joined corresponding edges 25,27 meet to form a closed bottom (near refs. 35,38 of Ferguson) of the container. Note, the panels 22a,23a or 22,23 of Ferguson are right triangular shape that is truncated at the bottom; the area of truncation is where the two seamed edges joined together to create a closed bottom.

For claim 68, Ferguson further discloses in figs. 7-8, a header 31 separably connected to one of the pair of free edges 29 along a line of perforations 49. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a header connected to one of the free edges along a line of perforations as taught by Ferguson in the container of Straeter as modified by Ferguson and Nuovo in order to allow a plurality of containers to be bonded together

wherein a user can separate a single container from the plurality of containers by tearing at the perforations (col. 5, lines 24-32 of Ferguson).

For claim 69, Straeter as modified by Ferguson and Nuovo (emphasis on Straeter) further discloses at least a portion of the flap 42 extends from the fold line (created when folding the flap over the opening) to a part of the opening opposite the fold line and is secured there by adhesive 26 (see figs. 3-4 of Straeter).

Allowable Subject Matter

18. **Claim 27** would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

19. **Claims 26,34-35,62** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

20. The following prior arts are made of record to provide the best available relevant examples of a plant container: Weder et al.047, Schwarzkopf, and Gulker all teach forming a container from two webs of film material. Martinez teaches a flower device having flaps to cover a top opening of the device. Huston and Obici both teach a container having a flap folded over a top opening of the container. Ferguson and Weder882 both teaches a floral sleeve. Shaffer et al. teach method of folding napkins and aligning and stacking them in a pack. Breen teaches a triangular shaped envelope with folding flap. Crandal teaches an envelope for a broom, the envelope having a flap to be folded over an opening to cover a head part of the broom.

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21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is (703) 305-0765. The examiner can normally be reached on Monday - Friday from 9:00 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



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